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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,456	09/16/2003	Pascal Simon	229971US0	2515

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EXAMINER

LAMM, MARINA

ART UNIT PAPER NUMBER

1617

DATE MAILED: 10/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/662,456

Applicant(s)

SIMON ET AL.

Examiner

Marina Lamm

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 24-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 and 28-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>9/16/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-32 are pending in this application filed 9/16/03, which claims priority to the US provisional application filed 10/7/02 and French application filed 9/19/02. Claims 1-23 and 28-32 are being examined at this time; Claims 24-27 have been withdrawn from consideration as directed to non-elected invention. See below.

Oath/Declaration

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:
Non-initialed and/or non-dated alterations have been made to the oath or declaration. See 37 CFR 1.52(c).

Election/Restrictions

1. Applicant's election with traverse of Group I, Claims 1-23 and 28-32, in the reply filed on 7/31/06 is acknowledged. The traversal is on the ground(s) that "the Examiner has not carried the burden of providing sufficient reasons and/or examples to support any conclusion that restriction is proper". This is not found persuasive. It is noted that the Examiner has provided evidence supporting the restriction requirement. "In the instant case the article of Group I can be made by another and materially different process such as impregnating a substrate with an aqueous composition and drying the impregnated substrate so that the article is free of water. See WO 99/13861 supplied by the Applicant." See Office Action dated 6/28/06.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 24-27 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed 7/31/06.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 30-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 30 is viewed as indefinite because it recites the limitation "article made by the process according to Claim 28." Claim 28 is directed to a method of using an article (i.e. moistening an article) rather than a method of making it. Referring to the method cited in Claim 28 as to the process of making an article is confusing.

Claims 31 and 32 are rejected because they contain all the limitations of Claim 30 rejected for the reasons given above.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-14, 16-23 and 28-32 are rejected under 35 U.S.C. 102(b) as being anticipated by McAtee et al. (WO 99/13861), supplied by the Applicant.

McAtee et al. teach a substantially dry personal cleansing article for cleansing the skin or hair by wetting the dry article with water, comprising a water-insoluble substrate (e.g. a non-woven synthetic or natural material) having multiple layers. See Abstract; p. 9, lines 23-27; p.18, lines 21-37; p. 63, lines 22-27; p. 64, line 21; p. 68, lines 17-19. The article of McAtee et al. is impregnated with a substantially anhydrous composition (i.e. containing preferably less than about 5% by weight of water and more preferably less than about 1% by weight of water) comprising 0.5-12.5% of a lathering surfactants, such as non-ionic lathering surfactants (e.g. polyhydroxy fatty acid amides, alkoxylated fatty acid esters, lathering sucrose esters, etc.); 0.05-99% of a conditioning component such as mineral oil, petrolatum, fatty esters, silicone oils, vegetable oils; and 0.05-0.5% of hydrophilic thickeners and viscosity modifiers such as crosslinked polyacrylic resins (e.g. Carbopol). See p. 23, line 7; p. 25, line 23 – p. 27, line 8; p. 30, line 30 – p. 35, line 34; p. 37, lines 21-28; p. 38, lines 11-12, 14-26. The substrate can be made into a variety of shapes and forms including flat pads, thick pads, thin sheets; square, round, rectangular or oval pads. See p. 19, lines 22-30. The article of McAtee et al. may contain additional ingredients such as lipophilic or hydrophilic active agents, lipids such as beeswax or other waxes, colorants, perfumes, antioxidants, etc. See p. 40, lines 9-36; pp. 52-62; p. 63, lines 4-20. The article of McAtee et al. comprises 0.25-

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150% of the impregnating composition by weight of the substrate. See p. 36, lines 24-35.

Thus, McAtee et al. teach each and every limitation of Claims 1-14, 16-23 and 28-32.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over McAtee et al. (WO 99/13861).

McAtee et al. applied as above. The reference does not explicitly teach the claimed viscosity of the impregnating composition. However, determination of optimal or workable viscosity of the impregnating composition by routine experimentation is obvious absent showing of criticality of the claimed viscosity. One having ordinary skill in the art would have been motivated to do this to obtain the desired deposition of the conditioning components onto the skin or hair.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. "Carbopol® Rheology Modifiers"

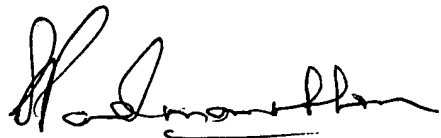
10. No claims are allowed at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (571) 272-0618. The examiner can normally be reached on Mon-Fri from 11am to 7pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, can be reached at (571) 272-0629.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Marina Lamm, M.S., I.D.
Patent Examiner
10/15/06



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER